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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF PENNSYLVANIA (PHILADELPHIA)

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In re: PURE WEIGHT LOSS, INC.,	:	Case No.: 08-10315 (JKF)
	:	
Debtor.	:	CHAPTER 7
	:	
	:	

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**OPINION AND ORDER ON MOTION TO DETERMINE THAT CERTAIN  
INSURANCE POLICY PROCEEDS ARE NOT PART OF THE BANKRUPTCY  
ESTATE<sup>1</sup>**

AND NOW, this 16<sup>th</sup> day of July, 2008, upon consideration of the motion of Zurich American Insurance Company ("Zurich"), to determine that certain insurance policy proceeds are not part of the bankruptcy estate and any response thereto, the Court makes the following findings of fact and conclusions of law and enters the following order:

**FINDINGS**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Court has the power to grant the relief sought herein pursuant to 11 U.S.C. § 105.

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<sup>1</sup> This motion does not seek any coverage determination by Zurich American Insurance Company as to any request for coverage made by Mr. Vahan Karian or any other person or entity, pursuant to any insurance policy. Nothing in Zurich American Insurance Company's motion, nor this Opinion and Order constitutes an admission by Zurich American Insurance Company that any obligation exists in favor of Mr. Vahan Karian or any other person or entity against Zurich American Insurance Company, on account of any insurance policy or request for coverage thereunder.

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3. Zurich issued a "Private Company Directors, Officers and Employees Liability Policy" (the "Policy"), to LA Weight Loss Centers, Inc (a copy of which is annexed hereto as Exhibit A).

4. In the matter of the *Commonwealth of Pennsylvania v. Vahan Karian, Individually, and as President and sole owner and sole shareholder of Pure Weight Loss, Inc.; also f/k/a L.A. Weight Loss Centers, Inc; and Pure Weight Loss, Inc., also f/k/a L.A. Weight Loss Centers, Inc.*, indexed with the Commonwealth Court of Pennsylvania as 36 M.D. 2008 (hereinafter, the "Commonwealth Action"), Mr. Karian has been represented by Reed Smith, which has billed significant fees and costs representing Mr. Karian to date and expects it may bill significant fees and costs prospectively.

5. Mr. Karian is also a defendant in other actions (the "Other Actions") as to which he has requested coverage from Zurich pursuant to the Policy.

6. Zurich has at the present time based on the facts and the law as it understands them to be,<sup>2</sup> determined that Mr. Karian is entitled to coverage for Defense Costs (including both reasonable and necessary fees and costs) for certain claims asserted against him in the Commonwealth Action and wishes to disburse to Reed Smith, its reasonable and necessary fees and costs incurred to date in defending Mr. Karian and such other and further reasonable and necessary fees and costs that Reed Smith may incur which Zurich concludes constitutes Defense Costs for those certain claims for which Zurich determines to provide coverage (said reasonable and necessary fees and costs, both accrued and prospective, shall be defined hereinafter as "Reed Smith Defense Costs").

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<sup>2</sup> Zurich's provision of coverage, to the extent that it has determined to provide coverage, is without prejudice to any reservation of rights or determination to disclaim coverage that Zurich has or may choose to make.

7. With respect to the Other Actions, Zurich may determine based on the facts and the law as it understands them to be,<sup>3</sup> that Mr. Karian is entitled to coverage for Defense Costs (including both reasonable and necessary fees and costs) for certain claims asserted against him in the Other Actions, for which Zurich may wish to reimburse Mr. Karian's counsel, if any, therein, for its (or their) reasonable and necessary fees and costs incurred in defending Mr. Karian and such other and further reasonable and necessary fees and costs as said counsel may incur which Zurich concludes constitutes Defense Costs for those certain claims for which Zurich has, to the extent it does, determined to provide coverage (said reasonable and necessary fees and costs, both accrued and prospective, shall be defined hereinafter as "Other Actions Defense Costs").

8. In both the Commonwealth Action and the Other Actions, Zurich may, reserving all its rights and remedies, conclude that Mr. Karian is entitled to indemnification for money paid towards the settlement, if any, of certain claims brought in the Commonwealth Action and the Other Actions. Any such settlement payments shall be referred to hereinafter as "Settlement Payments".

9. The "Policy" in question is a "wasting policy", such that any payments made towards the Reed Smith Defense Costs, the Other Actions Defense Costs, and Settlement Payments, diminish the policy limits.

10. The Court concludes that the Policy proceeds, if any, necessary to pay the Reed Smith Defense Costs, Other Actions Defense Costs, and Settlement Payments, are not part of the bankruptcy estate in the above captioned bankruptcy proceeding. *See, Miller v. McDonald (In re World Health Alternatives, Inc.)*, 369 B.R. 805 (Bankr. D. Del. 2007)

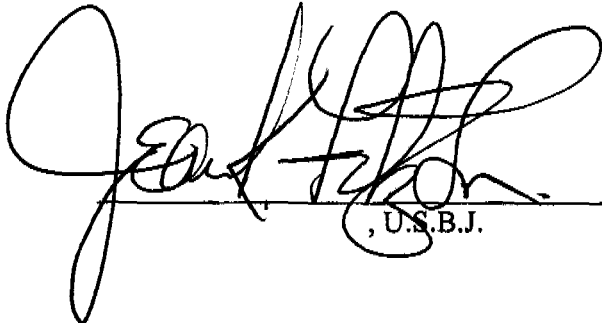
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<sup>3</sup> Zurich's provision of coverage, to the extent that it has determined to provide coverage, is without prejudice to any reservation of rights or determination to disclaim coverage that Zurich has or may choose to make.

**WHEREFORE**, the Court hereby Orders that:

1. Said Policy proceeds necessary to pay Reed Smith Defense Costs, Other Actions Defense Costs, and Settlement Payments, are not part of the bankruptcy estate in the above captioned matter and the Trustee, and all debtors, creditors, and any other person or entity having any interest in the above captioned bankruptcy proceeding are henceforth forever precluded from making any claim against Zurich on account of payment of Reed Smith Defense Costs, Other Actions Defenses Costs, and Settlement Payments as defined above (which are acknowledged to include prospective sums); and
2. The Court's Opinion and Order does not imply that any matter with respect to the Policy is necessarily within the jurisdiction of the Bankruptcy Court, other than whether the Reed Smith Defense Costs, Other Actions Defense Costs and Settlement Payments are within the bankruptcy estate.

SO ORDERED:

  
\_\_\_\_\_, U.S.B.J.

Dated: \_\_\_\_\_, 2008

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